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Attorneys for Plaintiffs
 LOS ANGELES TURF CLUB, INCORPORATED,
 LOS ANGELES TURF CLUB II, INC.,
 PACIFIC RACING ASSOCIATION, PACIFIC RACING
 ASSOCIATION II, GULFSTREAM PARK RACING
 ASSOCIATION, INC., OREGON RACING, INC.,
 MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC.,
 and LAUREL RACING ASSOCIATION, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES TURF CLUB,)	Case No.: 2:15-cv-9332
INCORPORATED, a California)	
Corporation, LOS ANGELES TURF)	
CLUB II, INC., a California Corporation,)	STIPULATION FOR PROTECTIVE
PACIFIC RACING ASSOCIATION, a)	ORDER
California Corporation, PACIFIC)	
RACING ASSOCIATION II, a California)	
Corporation, GULFSTREAM PARK)	
RACING ASSOCIATION, INC., a)	
Florida Corporation, OREGON RACING,)	
INC., a Delaware Corporation,)	
MARYLAND JOCKEY CLUB OF)	
BALTIMORE CITY, INC., a Maryland)	
Corporation, and LAUREL RACING)	
ASSOCIATION, INC., a Maryland)	
Corporation,)	
)	

1 Plaintiffs,)

2 vs.)

3)

4 HORSE RACING LABS, LLC, a)

5 Delaware Limited Liability Company,)

6 (also known as IMMERSE, LLC), doing)

7 business as DERBYWARS, and DOES 1)

8 through 10, inclusive,)

9 Defendants.)

10)

11 **STIPULATED PROTECTIVE ORDER**

12 Plaintiffs Los Angeles Turf Club, Inc., Los Angeles Turf Club II, Inc., Pacific

13 Racing Association, Pacific Racing Association II, Gulfstream Park Racing

14 Association, Inc., Oregon Racing Inc., Maryland Jockey Club of Baltimore City, Inc.,

15 and Laurel Racing Association, Inc.'s (collectively, "Plaintiffs") and Defendant Horse

16 Racing Labs, LLC, doing business as Derby Wars ("Derby Wars") (together with

17 Plaintiffs, the "Parties"), by and through their respective counsel of record, hereby

18 stipulate and agree as follows:

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are anticipated to involve the

21 production of confidential, proprietary, or private information, including trade secrets

22 and confidential financial information, for which special protection from disclosure to

23 the public and from the use for any purpose other than the prosecution and defense of

24 this litigation would be warranted. Accordingly, the parties hereby stipulate to and

25 petition the Court to enter the following Stipulated Protective Order. The parties

26 acknowledge that this Order does not confer blanket protections on all disclosure or

27 responses to discovery and that the protection it affords extends only to the limited

28 information or items that are entitled under the applicable legal principles to treatment

as confidential.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under *Federal Rules of Civil Procedure* Rule 26(c).

2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.6 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential”.

2.7 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.8 House Counsel: attorneys who are employees of a Party.

2.9 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.10 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, and who is not a past or a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with

1 this litigation.

2 2.11 Professional Vendors: persons or entities that provide litigation support
3 services (e.g., photocopying; videotaping; translating; preparing exhibits or
4 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
5 their employees and subcontractors.

6 2.12 Protected Material: information or items marked confidential pursuant to
7 this Stipulation and Order.

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only Protected
10 Material (as defined above), but also any information copied or extracted therefrom, as
11 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
12 conversations, or presentations by parties or counsel to or in court or in other settings
13 that might reveal Protected Material. The protections conferred by this Stipulation and
14 Order do not cover the following information: (a) any information that is in the public
15 domain at the time of disclosure to a Receiving Party or becomes part of the public
16 domain after its disclosure to a Receiving Party as a result of publication not involving
17 a violation of this Order, including becoming part of the public record through trial or
18 otherwise; and (b) any information known to the Receiving Party prior to the
19 disclosure or obtained by the Receiving Party after the disclosure from a source who
20 obtained the information lawfully and under no obligation of confidentiality to the
21 Designating Party.

22 4. DURATION

23 Even after the termination of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
25 in writing or a Court Order otherwise directs.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or non-party that designates information or items for protection under this

Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), will expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, then that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., the second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. After the inspecting Party
 2 has identified the documents it wants copied and produced, the Producing Party must
 3 determine which documents, or portions thereof, qualify for protection under this
 4 Order, then, before producing the specified documents, the Producing Party must affix
 5 the appropriate legend (“CONFIDENTIAL”) at the top of each page that contains
 6 Protected Material. If only a portion or portions of the material on a page qualifies for
 7 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
 8 by making appropriate markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial
 10 proceedings, that the Party or non-party offering or sponsoring the testimony identifies
 11 on the record, before the close of the deposition, hearing, or other proceeding, all
 12 protected testimony, and further specifies any portions of the testimony that qualify as
 13 “CONFIDENTIAL”. When it is impractical to identify separately each portion of
 14 testimony that is entitled to protection, and when it appears that substantial portions of
 15 the testimony may qualify for protection, the Party or non-party that sponsors, offers,
 16 or gives the testimony may invoke on the record (before the deposition or proceeding
 17 is concluded) a right to have up to 20 days to identify the specific portions of the
 18 testimony as to which protection is sought. Only those portions of the testimony that
 19 are appropriately designated for protection within the 20 days shall be covered by the
 20 provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately bound by the
 22 court reporter, who must affix to the top of each such page the legend
 23 “CONFIDENTIAL” as instructed by the Party or non-party offering or sponsoring the
 24 witness or presenting the testimony.

25 (c) for information produced in some form other than documentary,
 26 and for any other tangible items, that the Producing Party affix in a prominent place on
 27 the exterior of the container or containers in which the information or items is stored
 28 the legend “CONFIDENTIAL”. If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portions, specifying whether they qualify as “Confidential”.

3 5.3 Inadvertent Failures to Designate. If corrected within a reasonable time, a
4 Producing Party does not waive the right to designate material as “CONFIDENTIAL”
5 by inadvertently failing to designate it as such before producing the same to the
6 Receiving Party. After being notified of the inadvertent failure, the Receiving Party
7 must take reasonable steps to retrieve the information if the party disclosed it before
8 being notified, and to have any person who received the material sign the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and must make
10 reasonable efforts to assure that the material is treated in accordance with the
11 provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
14 Party’s confidentiality designation is necessary to avoid foreseeable substantial
15 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
16 the litigation, a party does not waive its right to challenge a confidentiality designation
17 by electing not to mount a challenge promptly after the original designation is
18 disclosed.

19 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
20 Designating Party’s confidentiality designation must do so in good faith and must
21 begin the process by conferring directly (as required by Local Rule 37-1), with counsel
22 for the Designating Party. In conferring, the challenging Party must explain the basis
23 for its belief that the confidentiality designation was not proper and must give the
24 Designating Party an opportunity to review the designated material, to reconsider the
25 circumstances, and, if no change in designation is offered, to explain the basis for the
26 chosen designation.

27 6.3 Judicial Intervention. A Party that elects to press a challenge to a
28 confidentiality designation after considering the justification offered by the

1 Designating Party may file and serve a motion, under seal, under Local Rule 37-1, *et*
 2 *seq.* that identifies the challenged material and sets forth in detail the basis for the
 3 challenge.

4 The burden of persuasion in any such challenge proceeding shall be on the
 5 Designating Party. Until the Court rules on the challenge, all parties shall continue to
 6 afford the material in question the level of protection to which it is entitled under the
 7 Producing Party's designation.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 10 disclosed or produced by another Party or by a non-party in connection with this case
 11 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 12 Material may be disclosed only to categories of persons and under the conditions
 13 described in this Order. When the litigation has been terminated, a Receiving Party
 14 must comply with the provisions of section 11, below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
 16 location and in a secure manner that ensures that access is limited to the persons
 17 authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 19 otherwise ordered by the court or permitted in writing by the Designating Party, a
 20 Receiving Party may disclose any information or item designated CONFIDENTIAL
 21 only to:

22 (a) the Receiving Party's Outside Counsel of record in this action, as well
 23 as employees of said Counsel to whom it is reasonably necessary to disclose the
 24 information for this litigation and;

25 (b) the officers, directors, and employees (including House Counsel) of
 26 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
 27 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the Court and its personnel;

4 (e) court reporters, their staffs, and professional vendors to whom
5 disclosure is reasonably necessary for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (f) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
9 depositions that reveal Protected Material must be separately bound by the court
10 reporter and may not be disclosed to anyone except as permitted under this Stipulated
11 Protective Order;

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information; and

14 (h) any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the Parties engaged in settlement discussions

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION.

18 If a Receiving Party is served with a subpoena or an order issued in other
19 litigation that would compel disclosure of any information or items designated in this
20 action as “CONFIDENTIAL”, the Receiving Party must so notify the Designating
21 Party, in writing (by fax, if possible) immediately and in no event more than three
22 court days after receiving the subpoena or order. Such notification must include a
23 copy of the subpoena or court order.

24 The Receiving Party also must immediately inform in writing the Party who
25 caused the subpoena or order to issue in the other litigation that some or all the
26 material covered by the subpoena or order is the subject of this Protective Order. In
27 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
28 promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the
 2 existence of this Protective Order and to afford the Designating Party in this case an
 3 opportunity to try to protect its confidentiality interests in the court from which the
 4 subpoena or order issued. The Designating Party shall bear the burdens and the
 5 expenses of seeking protection in that court of its confidential material – and nothing
 6 in these provisions should be construed as authorizing or encouraging a Receiving
 7 Party in this action to disobey a lawful directive from another court.

8 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 10 Protected Material to any person or in any circumstance not authorized under this
 11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 12 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
 13 retrieve all copies of the Protected Material, (c) inform the person or persons to whom
 14 unauthorized disclosures were made of all the terms of this Order, and (d) request such
 15 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that
 16 is attached here as Exhibit A.

17 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 18 PROTECTED MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain
 20 inadvertently produced material is subject to a claim of privilege or other protection,
 21 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 22 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 23 may be established in an e-discovery order that provides for production without prior
 24 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), the production
 25 of a privileged or work-product-protected document, whether inadvertent or otherwise,
 26 is not a waiver of privilege or protection from discovery in this case or in any other
 27 federal or state proceeding.
 28

11. FILING PROTECTED MATERIAL.

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Rule 79-5.

11. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must either return all Protected Material to the Producing Party, or destroy all such Protected Material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Materials remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS.

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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6

7 Dated: November 2, 2016

CORBETT, STEELMAN & SPECTER
Richard B. Specter
Diane L. Ellis

9
10 By: /s/ Richard B. Specter
Richard B. Specter
Attorneys for Plaintiffs
11
12

13 Dated: November 2, 2016

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16 By: /s/ Matthew P. Kanny
Matthew P. Kanny
Attorneys for Defendant
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23 **LOCAL RULE 5-4.3.4(a)(2)(i) CERTIFICATION**

24 The filer of this document attests that all other signatories listed above on whose
25 behalf this filing is submitted concur in the filing's content and have authorized the
26 filing.
27
28

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Central District of
California on _____ [date] in the case of *Los Angeles Turf Club Incorporated, et
al. v. Horse Racing Labs, LLC, Case No. 2:15-cv-09332-SJO (JEMx)*. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

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1 I hereby appoint _____ [print or type full name] of
2 _____ [print or type full address and
3 telephone number] as my California agent for service of process in connection with
4 this action or any proceedings related to enforcement of this Stipulated Protective
5 Order.

6
7 Date: _____

8 City and State where sworn and signed: _____
9

10 Printed name: _____
[printed name]

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12 Signature: _____
13 [signature]
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